

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 454 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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SUNDER TEXTILE AGENCY THRO' PARTNER GANPATSINGH B PAWAR

Versus

JAGDISHCHANDRA C SHAH

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Appearance:

MR GM JOSHI for Petitioner

MR SS PAREEK for Respondent No. 1, 2

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CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 28/07/2000

ORAL JUDGEMENT

This Revision Application has been filed against the order dated 13.4.2000 below application exh.101 in HRP Suit no.1357 of 1988 by the Small Cause Court, Ahmedabad whereby the plaintiffs' application has been allowed and commission patra has been issued by the

court to the address which is shown in the application para 15(1)(2) and also (3) wherever Jaichand Champalal Bhurat is available and the Commissioner has been directed to note down while the plaintiffs' learned advocate interrogates Jaichand Bhurat and the defendant or his learned advocate can remain present if they wish, while interrogation is made at their own costs. The aforesaid Revision Application has been preferred under section 29 of the Bombay Rents, Hotel and Lodging House Rates Control, Act, 1947. (Hereinafter referred to as the Act).

2. The matter was admitted and notice was also issued to the respondents-plaintiff by an order dated 3.5.2000. The matter was listed before another Bench and the question was raised before other Bench. The question was whether Revision would lie under section 29 of the Rent Act or under section 115 of the Civil Procedure Code. The learned counsel for the petitioner requested for some reasonable time to clarify this situation. The learned counsel for the respondents-plaintiffs moved Civil Application no. 5493 of 2000 for setting aside the ex parte injunction on the ground that the Revision Application is not maintainable in this Court either under section 115 of Civil Procedure Code or under section 29 of the Rent Act and at the most, revisional jurisdiction can be exercised against the order of the appellate court in this Court under section 115 of the Civil Procedure Code, but no appeal has been filed against the order of the trial court. Hence, this Court has no jurisdiction to entertain this Revision Application. Rule was issued by an order dated 13th July, 2000. The matter came up for hearing yesterday. Both the learned advocates argued the matter yesterday as well as today.

3. The contention of the learned counsel for the petitioner is that if a substantial right is affected in connection with the landlord and tenant, then a Revision Application would lie under section 29(3) of the Rent Act. If the order is of procedural nature, then Revision Application under section 115 of Civil Procedure Code would lie. He also relied on the decision of the learned Single Judge of this Court in the case of Maharana Mills Pvt.Ltd. vs. Harvadan Manharbhai and others reported in 1972 GLR,522 equivalent to AIR 1972, Gujarat, 226 wherein it has been observed as under:

"Rule 16 of the Bombay Rents, Hotel and Lodging House Rates Control Rules, 1948 provides for is

that if there is no specific provision relating to any procedural matter in the Bombay Rent Act or Rules made thereunder, then the Court trying suits shall be guided by the provisions of the Code of Civil Procedure. Section 29(3) read with section 31 and Rule 16 does not confer upon the District Court Revisional jurisdiction in matters which are purely procedural and which do not bear the imprint of the provisions of the Bombay Rent Act. The raising of an issue and its decision are purely procedural matters governed by the provisions of the Code of Civil Procedure. By no stretch of imagination it can be said that they bear the imprint of the provisions of the Bombay Rent Act or the Bombay Rent Rules or that they are otherwise governed by the said Act or the said Rules. The District Court, therefore, had no jurisdiction under section 29(3) of the Rent Act to entertain the revision application.

In order to determine whether an interlocutory order made in a suit governed by the Bombay Rent Act is appealable to or revisable by the District Court, the test which must be applied is this : What is the subject matter of the Order ? If there is an order the subject matter of which is governed by the provisions of the Bombay Rent Act, then certainly an appeal therefrom or a revision application against that order will be governed by section 29 of the Rent Act. However, if the order which is sought to be appealed from or whose revision is sought affects the substantive rights of the aggrieved party under the Bombay Rent Act, then the provisions of section 29(3) will be attracted in order to determine whether it is appealable or revisable under the provisions of the said section. If the subject matter does not affect the substantive rights of the aggrieved party under the Bombay Rent Act, section 29 will have no application.

Held that purely procedural orders which do not affect the substantive rights of a party under the Bombay Rent Act or the Rules made thereunder or the subject matter of which is not governed by the Bombay Rent Act or the Rules made thereunder are not the orders which attract the revisional jurisdiction of the District Court under section 29 of the Bombay Rent Act."

4. As the nature of the order passed by the trial court is of procedure that does not affect the substantial rights of the parties. Hence the order is revisable by this Court.

5. The learned counsel for the petitioner referred the decision of this Court dated 8th April, 1988 in Civil Revision Application no.170 of 1983 whereby the matter has been referred for the consideration by a larger bench. As such, this Court should tag the present Revision Application with the said REvision Application no.170 of 1983. In case the matter is decided by the larger bench, this question will also be answered and it will be decided whether the Revision would lie before this Court or before the appellate bench of the Small Cause Court at Ahmedabad. He also referred the order passed by this Court dated 5.10.99 in Civil Revision Application no.1449 of 1999 wherein that application has been directed to be listed for admission after the decision in the Civil Revision Application no.170 of 1983 and further proceedings of HRP civil suit no.2022 of 1985 had been stayed pending before the Small Cause Court at Ahmedabad till the next date of listing. In that case, when the order was passed on 5.10.99, the other party was not appearing and there was no contention of the other side that the decision is required urgently and hence that order appears to have been passed.

6. On the other hand, the learned counsel for the respondents contended that by referring the order dated 8th April, 1988, this Court came to the conclusion that the decision passed by the learned Judge was not in agreement with the decision in the case of Maharana Mills Pvt.Ltd. (Supra). It was observed by the learned Single Judge in the order dated 8th April, 1988 referred to above that all orders that are passed by the Rent Court are under the provisions of Bombay Rent Act and not under Civil Procedure Code. There is no distinction that all orders are passed by the trial court under Bombay Rent Act and certain orders are passed under the provisions of Civil Procedure Code, such as amendment of plaint, raising of issues or grant or adjournment in certain cases. All such orders are passed by the Court in exercise of jurisdiction under Rent Act. There cannot be any such distinction that substantive orders are deemed to have been passed under Rent Act and the procedural orders are deemed to have been passed under the provisions of Civil Procedure Code and that Rent Act would not apply to procedural orders. Such distinction can be made and all orders are required to be treated to have been passed under the Rent Act and therefore section

29(3) of the Bombay Rent Act will apply. He also referred the provisions of section 29 of the Rent Act. Section 29 of the Bombay Rent Act provides certain cases where an appeal lies against a decree or orders made by the Court or Small Causes, Ahmedabad, exercising jurisdiction under section 28 to a bench of two judges of the said court which shall not include the judge who made such decree or order; where an order made by a Judge of the Court of Small Causes established under the Privilcial Small Causes Courts Act, 1887, or by the Court of the Civil Judge deemed to be the Court of Small Causes under clause (c) of sub-section (2) of section 28 or by a Civil Judge exercising such jurisdiction, to the District Court, the appeal would lie to the District Court. Where an order and decree are not appealable in respect of which no appeal lies, then subject to the condition that no appeal shall lie from a decree or order in respect of which no appeal lies under the Code of Civil Procedure, 1908. Sub-section (2) of section 29 provides that where no appeal lies against any decision in appeal under sub-section (1) but the High Court can exercise revisional jurisdiction. Sub-section (3) of the said section provides that where no appeal lies from a decree or order in any suit or proceeding in the city of Ahmedabad, the bench of two Judges specified in clause (a) of sub-section (1) and elsewhere District Court, may for the purpose of satisfying itself, may exercise revisional jurisdiction.

Thus, if no appeal lies, then revision application can be entertained either by the appellate bench of two judges or District Court, but that cannot be exercised by the High Court under section 115 of the Civil Procedure Code or under section 29(3) of the Rent Act. This Revision Application is not at all entertainable in this Court.

7. I have carefully considered the contentions raised by the learned advocates for the parties and have gone through the papers on record. This revision centres round the question whether the Revision Application would lie or a Revision Application would be available under section 29(3) of the Rent Act or section 115 of Civil Procedure Code or no revision application would be available to any of the parties against the order passed by the trial court which is not appealable under the provisions of the Bombay Rent Act. Ordinarily, we should follow the rule that once the matter has been referred to a larger bench, this matter should also be referred to a larger bench for decision or to be decided

after the decision of the matter already referred to a larger bench. There are certain facts which require immediate decision, under exigency of the present case. As such, this matter is not being decided as to whether a revision would lie before appellate bench of Small Cause Court or before this Court under section 29(3) of the Rent Act or before this Court under section 115 of Civil Procedure Code. In my opinion, once the statute provides specific procedure for appeal or revision, the Rent Act itself provides the procedure for exercising revisional powers. As section 29(3) clearly lays down that where no appeal lies under section 29 from a decree or order in any suit or proceeding, the bench of two Judges of Small Causes Court, Ahmedabad specified in clause (a) of sub-section (1) and elsewhere the District Courts are empowered to exercise revisional jurisdiction.

8. In the present case, admittedly, the order is not appealable under the provisions of section 29 of the Act. As such, revisional jurisdiction can be exercised by the Bench of two Judges or by the District Court as the case may be, specified therefor. As the order on hand has been passed by the Judge, Small Cause Court, Ahmedabad, Revision Application would be entertainable before the Bench of two Judges of Small Causes Court, Ahmedabad. As such, the appellate bench of two Judges of Small Cause Court, Ahmedabad is empowered to exercise revisional jurisdiction.

9. Thus, under exigency requiring immediate decision, this Revision application can be disposed of finally with certain directions. This Revision Application is accordingly disposed of with a direction that the petitioner will file a Revision Application before the appellate Bench Small Cause Court, Ahmedabad within three weeks from today. In case, such Revision application is filed within stipulated time, the concerned Bench will decide the same in accordance with law without going into the question of limitation within a period of two months thereafter, after giving a reasonable opportunity of hearing to the parties. The interim relief granted by this Court will continue till the decision of the Revision Application by the Appellate Bench within stipulated time. The writ of this judgment be sent forthwith.

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